

Study of eminent domain -- Public uses, determination of necessity, and compensation for private property owners	Member defined issue	.15 FTE <ul style="list-style-type: none">• All of Options B & C• Examine existing statutes that define public uses and establish the authority of the state or its agents to exercise the power of eminent domain.• Analyze the facts necessary for condemnation and its impacts on the ability of a private property owner to obtain fair market value.• Analyze opportunities to promote the use of public land prior to exercising the power of eminent domain. Deliverables: <ul style="list-style-type: none">• Interim report• Legislation (if any)	.10 FTE <ul style="list-style-type: none">• All of Option C• Examine appraisal processes, negotiation requirements, litigation expenses, and other condemnation policies to determine if changes are necessary to ensure good faith negotiations.• Review financial mechanisms available to private property owners, including reimbursements for costs incurred in negotiations, additional legal costs, and other forms of compensation for impacts to land. Deliverables: <ul style="list-style-type: none">• White paper• Legislation (if any)	.05 FTE <ul style="list-style-type: none">• Track case pending before the Montana Supreme Court and District Court and provide legal analysis of issues related to public uses and the enumeration of the authority to exercise the power of eminent domain in response to outcome.• Review eminent domain discussions in other Western states and related statutes.• Panel discussion. Deliverables: <ul style="list-style-type: none">• Legislation (if any)

1) Study eminent domain -- Public uses, determination of necessity, and compensation for private property owners

This proposal would look at eminent domain, with a focus on financial mechanisms available to private property owners, including reimbursements for costs incurred in negotiations, additional legal costs, and other forms of compensation for impacts to land.

The 1999 Legislature requested that the Legislative Council assign a study of the use of eminent domain and the existing statutes related to eminent domain. The study was assigned to the EQC, which created an eminent domain subcommittee composed of EQC members and Law, Justice, and Indian Affairs Committee members. The subcommittee developed a handbook to help the public better understand the use of the power of eminent domain.

Because this study will be linked to a case pending before the Montana Supreme Court and because much of the proposal is in response to a District Court decision and the passage of House Bill 198 by the 2011 Legislature, an analysis of public uses and the enumeration of the authority to exercise the power of eminent domain will be needed before delving into options for compensation.

As the EQC examines potential financial mechanisms for property owners, the EQC will first need to determine the role, if any, of the state in terms of taxation or landowner reimbursement and the associated legal ramifications of such compensation.

This study is anticipated to have a significant impact on the EQC's meeting schedule. There is a great deal of public interest in the topic, and public input during meetings likely would be lengthy. A significant amount of research on the topic has been done to-date. It will largely be up to EQC members to digest the information and come to a consensus on how best to balance private property rights and the exercise of eminent domain. The initiative referendum to refer H.B. 198 to the voters of Montana also needs to be contemplated in coordination with this proposed study. In addition, a case has been filed in District Court challenging the constitutionality of H.B. 198.